

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 15 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0385-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JAIME ROSALES,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200301192

Honorable William J. O'Neil, Judge

REVIEW GRANTED; RELIEF DENIED

Jaime Rosales

Florence
In Propria Persona

K E L L Y, Judge.

¶1 Pursuant to a plea agreement, petitioner Jaime Rosales was convicted of two counts of attempted child molestation, both dangerous crimes against children. In 2004, he was sentenced to the presumptive ten-year prison term on one count, and to supervised lifetime probation on the other count. Over six years later, Rosales sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., and, in this petition for

review, he challenges the trial court's order denying relief. We will not disturb the trial court's ruling absent an abuse of discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶2 In October 2010, Rosales filed a "Motion to Submit Pro-Per Petition for Post-Conviction Relief under Rule 32.1(e)," challenging his sentence and claiming the trial court had lacked jurisdiction to impose the sentence it did. Notably, Rosales did not file a notice of post-conviction relief or explain in his "motion" why he had waited six years after he was sentenced to initiate what appears to be his first Rule 32 proceeding. *See* Ariz. R. Crim. P. 32.2(b) ("If the specific exception [to preclusion] and meritorious reasons do not appear substantiating the claim and indicating why the claim was not stated . . . in a timely manner, the notice [of post-conviction relief] shall be summarily dismissed."). Rosales's "motion," which we infer the court treated as a notice of post-conviction relief, was patently untimely. *See* Ariz. R. Crim. P. 32.4(a) (notice of post-conviction relief in noncapital case "must be filed within ninety days after the entry of judgment and sentence"). Apparently in an attempt to avoid preclusion, Rosales asserted he was seeking relief based on newly discovered evidence pursuant to Rule 32.1(e). However, his claims were not newly discovered, nor did he characterize them as such in his pleading or explain why he had not stated his claim in a timely manner. Instead, as the court correctly noted in its ruling denying post-conviction relief, Rosales's claims arise under Rule 32.1(a) and (b) and do not qualify as exceptions to preclusion under Rule 32.2(b).

¶3 In addition, Rosales fails on review to address the trial court’s finding that his claims are precluded. Instead, he merely reasserts the same claims he raised in his petition below. As we previously noted, however, in the absence of any of the exceptions to preclusion set forth in Rule 32.2(b), Rosales’s petition was untimely and therefore, precluded. *See* Ariz. R. Crim. P. 32.2(b).

¶4 Because we conclude the trial court did not abuse its discretion by denying post-conviction relief, we grant the petition for review but deny relief.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge